

# Shortened Oral Decision Training Materials

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# INTRODUCTION

The following materials should be used as a resource in conjunction with the Shortened Oral Decisions Training Video. The Power Point slides and the examples may be used for note taking and will be referenced during the training.

**POWER POINT SLIDES:  
GUIDELINES FOR ISSUING  
ORAL DECISIONS**

## Guidelines for Issuing Oral Decisions

Immigration Judge Training

- 
- Purpose of the oral decision
  - Structure of the individual hearing
  - Framework of the oral decision
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## THE PURPOSE OF THE ORAL DECISION

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- Why issue an oral decision?
    - Resolve disputed issues quickly
    - Provide legal reasoning for parties and appellate courts
  - When to issue an oral decision?
    - Where IJ can efficiently discuss all disputed issues
  - Alternatives to oral decisions:
    - Summary Order—Parties have knowingly and intelligently waived appeal
    - Written Decision—Complex or novel issues
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# THE HEARING

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- At the beginning of the hearing:
    - Narrow the issues for testimony
      - Have the parties made any stipulations or agreements?
      - If parties haven't discussed, give them time to clarify disputed issues.
  - After the hearing:
    - Revisit the contested issues
      - Are there any other stipulations or agreements that can be reached?
  - Motions
    - Resolve motions prior to conclusion of hearing
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## THE ELEMENTS OF THE ORAL DECISION

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## 4 Elements of the Decision

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1. Introduction
2. Addendum of Law
3. Analysis
4. Order



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# THE INTRODUCTION

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- Short and concise introduction to the decision
  - Begin decision with:
    - “This is the oral decision of the Immigration Judge.”
  - Do not include caption
  - Issues to consider:
    - Procedural history
      - Do NOT include full procedural history.
    - Removability
      - Only note whether charges were sustained.
    - Exhibits
      - Only note any objections made or diminished weight given.
    - If any of these issues are disputed, discuss in the **Analysis** section.
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## Example Introductory Statement

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- ▶ “The Respondent is an adult native and citizen of El Salvador.”

OR

- ▶ “The Respondent is a 42-year-old divorced male, native and citizen of Mexico.”



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## THE ADDENDUM OF LAW

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- What is the Addendum of Law?
    - Separate document containing circuit-specific legal standards and burdens of proof
    - Avoids unnecessary recitation of law in the oral decision
  - Where does it come from?
    - Created and maintained by law clerks at each court
    - Initially will be available on G: Drive
    - Later will be incorporated into e-ROP system
  - How should it be incorporated?
    - Give parties a copy and place a copy in the ROP
    - State that entered into the record and incorporated by reference
- 



#### Standard Language Addendum

The following statements of law are hereby incorporated into the Immigration Judge's oral decision. These statements are not the sole legal basis for the decision and are meant to be read in conjunction with any law cited in the oral decision itself.

#### I. Credibility

Applications for asylum, withholding of removal, and CAT relief made on or after May 11, 2005 are subject to the provisions of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 211 (2005). In making a credibility determination pursuant to the REAL ID Act, the Court must examine the totality of the circumstances, including the "demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant or witness's account, consistency between the applicant or witness's written and oral statements, the internal consistency of each statement, and the consistency of statements with other evidence in the record," as well as any other relevant factors. *Sbravetta v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010).

If the applicant testifies credibly, the Immigration Judge may determine that the applicant must provide further corroborative evidence to meet the applicant's burden of proof. INA § (b)(1)(B)(i). When corroborative evidence is requested, the applicant must be given an opportunity to provide the evidence or explain why the evidence is not reasonably available. *Roa v. Holder*, 648 F.3d 1079, 1093 (9th Cir. 2011).

#### II. Asylum

To qualify for asylum relief, the applicant bears the burden of demonstrating that he or she qualifies as a "refugee" as defined in INA § 101(a)(42)(A). INA § 208(b)(1)(A); 8 C.F.R. § 1208.13(a). The Act defines a "refugee" as any person who is outside his or her country of nationality and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of "past persecution" or a "well-founded fear of future persecution" on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b). The applicant's testimony may be sufficient to meet his or her burden of proof without corroboration if the testimony is credible, persuasive, and specific. INA § 208(b)(1)(B)(i).

To meet the nexus requirement, the applicant must show that the protected ground was "one central reason" for the harm that he or she suffered. *Parasimova v. Mukasey*, 555 F.3d 734, 740-41 (9th Cir. 2009).

#### A. Past Persecution

In order to establish past persecution, the applicant must show an incident, or incidents, that: (1) rises to the level of persecution; (2) is "on account of" one of the statutorily-protected grounds;

## Incorporating the Addendum of Law

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► **Standard Language:**

“An addendum stating the standards of law and burdens of proof relevant to these issues has been served on the parties and a copy placed in the record of proceedings. That addendum is hereby incorporated into this decision by reference.”

► **Always mention:**

- 1) That it was served on the parties;
- 2) That it was placed in the ROP;
- 3) That it is incorporated by reference into the decision.



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# THE ANALYSIS

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- Concisely state relevant facts
    - Do not summarize the entire testimony
  - Enumerate the disputed issues before discussing
    - If one issue is dispositive, only discuss that issue
  - Do not discuss credibility in-depth, unless disputed
    - If not disputed: “There is no dispute between the parties that the respondent testified credibly, and the Court finds the same.”
  - Do not discuss removability in-depth, unless disputed
  - Discussion of the issues should be concise
    - Do not recite entire black letter legal standards already included in addenda
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## The Disputed Issues

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With regard to the applications for relief, the principle issue before the Court is whether the respondent provided credible testimony. The Court finds that the respondent was not credible. In the event that the respondent was found credible, however, the court also considers the issues of: 1) whether the respondent has suffered past persecution on account of her membership in a particular social group; 2) whether the DHS has successfully rebutted her well-founded fear of future persecution; and 3) whether the respondent has shown that she will more likely than not be tortured by or with the acquiescence of the Salvadoran government if she is removed to El Salvador.



## Example of Legal Analysis

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“Because the Respondent testified credibly, his fear of return is subjectively genuine. As to the objective basis for the Respondent’s fear, he fears that if he returns to Mexico, the group that took Raul will come after him. Cartels and gangs are particularly active in many parts of Mexico. Michoacán, where the Respondent lived, is one state in which the cartels and gangs are very aggressive. Given the high level of crime in Michoacán, I find that the Respondent has met the objective prong of the analysis”



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# THE ORDER

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**ORDERS**

ORDER: IT IS HEREBY ORDERED that the charge of removability pursuant to INA § 237(a)(2)(A)(ii) is not sustained.

~~IT IS FURTHER ORDERED~~ that the respondent's motion to terminate be granted.



**ORDER**

ORDER: The respondent's applications for asylum under section 208(a) of the Act, withholding of removal under section 241(b)(3) of the Act, and withholding of removal under the Convention against Torture are denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States to El Salvador pursuant to the charges in the Notices to Appear.



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# CONCLUSION

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- Oral decisions should be short and concise
    - Rely on the Addendum of Law to provide legal framework
    - Keep recitations of legal standards and to a minimum
    - Do not summarize all of the testimony, only the core, relevant facts
  - Always include the 4 elements:
    - Introduction
    - Addendum of Law
    - Analysis
    - Order
- 



## EXAMPLE #1





































